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9 UNITED STATES DISTRICT COURT  
10 WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

11 HARRY WILLIAM O'NEAL,

12 Petitioner,

13 v.

14 MIKE KENNEY,

15 Respondent.  
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Case No. C08-5490BHS/JKA

REPORT AND  
RECOMMENDATION  
TO DENY *IN FORMA*  
*PAUPERIS* STATUS

**NOTED FOR:  
September 5, 2008**

20 This habeas corpus action, filed pursuant to 28 U. S.C. 2254, has been referred to the  
21 undersigned Magistrate Judge pursuant to Title 28 U.S.C. §§ 636(b)(1)(A) and 636 (b)(1)(B) and  
22 Local Magistrates' Rules MJR 3 and MJR 4.

23 Petitioner filed a proposed petition. Petitioner applies to proceed *in forma pauperis*. His  
24 documents show an average spendable balance of \$23.88 and a average monthly receipt of \$122.64  
25 (Dkt. # 1 page 4). Petitioner can afford the \$5.00 filing fee in this case. The district court may  
26 permit indigent litigants to proceed *in forma pauperis* upon completion of a proper affidavit of  
27 indigence. *See* 28 U.S.C. § 1915(a). However, the court has broad discretion in denying an  
28 application to proceed in forma pauperis. Weller v. Dickson, 314 F.2d 598 (9th Cir. 1963), *cert.*

1 *denied*, 375 U.S. 845 (1963). Petitioner has the funds needed for full payment.

2 Plaintiff has not shown that is unable to pay the full filing fee to proceed with his petition.  
3 Accordingly the court recommends the *in forma pauperis* status be **DENIED and petitioner be**  
4 **given thirty days to pay the filing fee.** Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the  
5 Federal rules of Civil Procedure, the parties shall have ten (10) days from service of this Report to  
6 file written objections. *See also* Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of  
7 those objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the  
8 time limit imposed by Rule 72(b), the clerk is directed to set the matter for consideration on  
9 **September 5, 2008**, as noted in the caption.

10 DATED this 12 day of August, 2008.

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12 /S/ J. Kelley Arnold  
13 J. Kelley Arnold  
14 United States Magistrate Judge  
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